PENITENTIARIES

Judicial review of two decisions of independent chairperson sitting for Archambault Institution's disciplinary court regarding applicant's conviction under s. 40(k) of *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (Act) — Applicant provided urine sample as part of Correctional Service of Canada (CSC) Urianalysis Program — Gamma-Dynacare laboratory (Dynacare), only laboratory in Canada certified by Substance Abuse and Mental Health Services Administration (SAMHSA), tested urine sample, finding it positive for tetrahydrocannabinol carboxylic acid (THC carboxylic acid) — Applicant receiving disciplinary offence report for "[taking] an intoxicant into [his] body" contrary to s. 40(k) — Program Manager refusing to provide sample of first urine sample taken from applicant for second opinion at another laboratory — Commissioner's Directive 566-10—Urinalysis Testing (Directive 566-10) providing for possibility of requesting "retest", as long as it is done in laboratory certified by SAMHSA —In the end, applicant not requesting retest — Applicant receiving, upon request, report from Dynacare indicating quantitative level of THC carboxylic acid found in his urine sample — Given Program Manager's refusal to provide urine sample so that applicant could instruct another laboratory to carry out independent second analysis, applicant requesting that offence report be rejected on ground that his fundamental rights were violated — Disciplinary court issuing interlocutory decision finding, *inter alia*, that: procedure established under program ensuring respect for inmates' right to procedural fairness; authorizing second opinion outside provided mechanisms, full control over second opinions on urinalyses going beyond requirements of procedural fairness; CSC not required to systematically disclose quantitative levels when disciplinary charges laid under Act, s. 40(k) — Disciplinary court finding applicant guilty of taking intoxicant into his body — Main issue whether disciplinary court erring in law in concluding: that CSC not required to systematically disclose quantitative levels for disciplinary charges laid under s. 40(k); that allowing applicant to seek second opinion, other than by using remedies enshrined in Act, Regulations, going beyond requirements of procedural fairness — Not disclosing quantitative level to inmate without specific request from inmate not violation of right to make full answer, defence — Inmate having right to have "all the information to be considered in the taking of the decision" — However, how much information needing to be provided determined in light of context, circumstances, defence raised by inmate — Furthermore, text of Act, s. 27(1) not justifying disclosure of information not considered by decision maker in taking of decision — In accordance with *Corrections and Conditional Release Regulations*, SOR/92-620, s. 69, positive test result giving rise to presumption that inmate indeed taking prohibited substance into body, certificate provided for in Regulations, s. 68, stating that sample positive, sufficient to establish that inmate committed offence under s. 40(k) — Quantitative levels may be relevant to nature of test performed, but relevance not requirement for disclosing information under Act, s. 27 — Procedural fairness in disciplinary hearings not breached when inmates required to justify need to receive information not taken into account in decision to charge them — Absence of obligation to systematically disclose quantitative levels creating barrier to strategies by which inmates can attempt to develop random defence system based on disclosure of precise level in order to avoid penalty — Disciplinary court making no reviewable error in this regard in its decision — Independent chairperson's decision denying applicant's request for second opinion to challenge results of first test constituting a "reasonable opportunity ... to ... introduce evidence" in his defence in disciplinary hearing under Program — SAMHSA certification reflecting highest standard in industry — Exclusive jurisdiction of approved laboratories favouring neither inmates nor CSC — These directives as to which laboratories to use constituting reasonable limit on right to introduce second opinion — Requiring that any outside laboratory used in connection with Program be SAMHSA-certified reasonable measure — Fact inmate not fully in control of second opinion not unduly prejudicial in itself — Independent chairperson's decision not breaching procedural fairness — Application dismissed.

PERRON V. CANADA (ATTORNEY GENERAL) (T-494-19, 2020 FC 741, Pamel J., reasons for judgment dated July 2, 2020, 48 pp.)